

Richard S. Taffet  
Diane C. Hertz  
John P. Son  
BINGHAM McCUTCHEN LLP  
399 Park Avenue  
New York, New York 10022  
Tel: (212) 705-7000

and

Bennett D. Krasner  
1233 Beech Street #49  
Atlantic Beach, NY 11509  
Tel: (516) 889-9353

*Attorneys for Plaintiff  
L & L Wings, Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY  
98 EAST CORP., PANAMA SURF &  
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

Civil Action No. CV-07-4137  
(BSJ) (GWG)

**DECLARATION OF  
MICHAEL HODGE  
RE: STORE #317**

Michael Hodge declares as follows under 28 U.S.C. § 1746:

1. I am an agent of High Tide Investigations ("HTI") which is located in Estero, Florida. HTI is a private investigative agency.
2. In or around April 2008, I was contacted by Michael Martinez of Advantage PI, Inc. ("Advantage") of Tampa, FL. Advantage retained me to visit the establishment located at

581 S. Collier Blvd., Marco Island, FL 34145 ("Store 317"). I was instructed to note the usage of any "Wings" signage inside and outside the store, and to purchase a small item and obtain the bag and receipt.

3. On April 21, 2008 at 3:15 pm, I arrived at Store 317 and observed that:

- a. the main outdoor signs displayed the name "Wings";
- b. within the store, there were hang tags attached to merchandise that also displayed the name "Wings."

4. During my visit to the Store 317, I purchased a keychain for \$1.05. The receipt displayed the "Wings" name. A true and correct copy of that receipt is attached as Exhibit A.

5. The shopping bag that I received with my purchase also displayed the "Wings" name. A true and correct photograph of that shopping bag is attached as Exhibit B.

6. Attached hereto as Exhibit C is a true and correct copy of my contemporaneous report prepared at Advantage's request and upon which this Declaration is based.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 24 day of June, 2008.

Michael Hodge

MICHAEL HODGE

**Wings 317**  
 581 S. Collier Blvd.  
 Marco Island, FL 34145  
 Tel: 941.389.0600 Fax: 941.389.0660  
 Date: 4/21/2008 Receipt #: 17436  
 Time: 2:51:50 PM IAME: MARCO ISLAND, FL  
 Cashier: mala WS#: 2

ITEM#	QTY	PRICE	EXT PRICE
45689	1	\$0.99	\$0.99
MARCO ISLAND SAND SANDAL KR.			
1 Units)		Subtotal:	\$0.99
		6.000 % Tax:	\$0.00
		RECEIPT TOTAL:	\$1.00
		Tend:	\$20.00
		Change:	\$18.99

Cash: \$20.00

Refunds within 7 days of purchase with original receipt and merchandise in original conditions.  
 Exchanges within 30 days of purchase with original receipt and merchandise in original conditions.  
 Clearance and bathing suits sales are final.  
 NO RETURNS OR EXCHANGES ON BEACH  
 ACCESSORIES



**EXHIBIT A**



• SOUTH CAROLINA • ALABAMA • FLORIDA • TENNESSEE

[www.marcodestin.com](http://www.marcodestin.com)

EXHIBIT B

**On-Site Store Checklist**

Location Address : 581 S. Collier Blvd., Marco Island, FL 34145  
 Date and Time of Visit : 4/21/08 3:15 pm  
 Agent Name : Michael Hodge  
 Agent Company Name : High Tide Investigations  
 Agent Company Address & Telephone number : 20070 Larios Loop, Estero, FL 33928  
(239) 203-6696

*Please complete the below pertaining to use, display and visible association with the "Wings" Trade dress*

1. Do The Main Outdoor Signs display the name "Wings"?

Yes

No

1a. If answered Yes, please take a picture of the sign and attach to the back of this document.

1b. If answered No, describe what the signs read?

---

2. Do any Parking Lot Signs or Parking Notice Directions display the name "Wings"?

Yes

No

3. Upon entering and walking around the store, did you notice any small signs that display the name "Wings"? Please be sure to include signs on top of clothing racks, the Store Policy Notice, Store Hours Posting, signage near the dressing room and any other forms of display in your response.

Yes

No

4. While walking around the store, did you notice any hang tags or product promotion stickers attached to merchandise that display the name "Wings"?

Yes

No

4a. If answered Yes to the above, please describe:

Clothing had "Wings" tags on them

*For the questions below, base your responses on observations gathered after purchasing an item less than \$2.00 in the store. Be sure to request an itemized receipt and shopping bag.*

5. What item did you purchase and how much did it cost?

Marco Island Sand Sandal Keychain - \$1.05

---

6. Does the receipt display the name "Wings"?

Yes

No

7. Does the shopping bag you received or do any shopping bags located behind the register display the name "Wings"?

Yes

No

**EXHIBIT C**